As prices rose, some bidders dropped out, believing that others were misjudging the market, and banked on the opportunity to obtain licenses in the event of defaults, license cancellation, and reauction -- the way the FCC said it would work. Others, judging the market potential differently, stayed in. The FCC owes an equal duty to all of these bidders. In my view, today's decision breaches that duty.

In September, we departed in a limited fashion from strict adherence to market mechanisms, and the majority has now moved further down the slippery slope. In the wake of today's decision, we can reasonably anticipate that these licensees, or those in other spectrum blocks, will seek other accommodations on future occasions. This is the inevitable result when government too readily intervenes to protect market participants from failure.

The real damage here is to our role as steward of the public airwaves. Our responsibilities are to facilitate use of the spectrum to bring competitive services to the public, to be fair to all parties (licensees and disappointed bidders alike), and to rely on marketplace forces rather than government edict to select winners and losers. Having placed spectrum in an auction with fair rules known to all parties, we should not intrude on the marketplace after the auction for the purpose of assisting some parties to remain licensees. The marketplace is far better suited than we are to determine the capabilities of licensees, and to provide support for those business plans that make economic sense.

Moreover, financial markets need regulatory certainty and predictability of outcomes. Otherwise the regulatory risk is too great to warrant investment. Wall Street needs the C block licensees to get on with business. Our September decision met with some applause, in part because it contributed certainty to the marketplace and allowed participants, equipment manufacturers, and suppliers of venture capital to proceed. The measures the majority takes today regretfully foster more uncertainty and unpredictability.

Specific Concerns

Although the majority has maintained the basic framework of the decision rendered last September, there are fundamental differences between what the Commission did then and what it is doing now. The new approach will entail greater governmental intrusion in the marketplace, more disruption of business plans, and more delays in C block construction and operation.

The options afforded last September were painstakingly tailored to maintain consistency with auction results and to speed the resumption of normal operation of the market. These options were designed to enable some licensees to exit their predicaments; others to regroup; and still others to refocus their energies on executing their business plan. Given the growing competition in the wireless marketplace, I believed it to be important to enable those C block licensees which were able to do so to "get back to business" as soon as possible. For that reason, one virtue of the options set forth in our September decision was that they were designed to give a modest hand to those most in need, <u>not</u> to create incentives for those licensees capable of proceeding under their original agreements to abandon their business plans.

As noted above, the majority is retaining the basic framework of September's decision, but changing it in significant ways. Today's decision: (1) increases the ability of licensees to credit deposits that otherwise would be forfeit; (2) allows some deposits to be applied against suspension interest; (3) permits licensees to choose among the options on an MTA-by-MTA basis; (4) extends the time when licensees need to either resume their payments or face cancellation of their licenses; *and* (5) indefinitely postpones the reauction. Taken in combination, the new array of options is complex, confusing, and overly intrusive in the marketplace.

The decision today takes what had been a menu of measured options and turns it into a smorgasbord of hearty choices. The enriched menu of options adopted today may compel all C block licensees to stop and reassess their business plans. Each will now feel obligated to consider whether changing its plans would be more advantageous than proceeding in accordance with the original auction outcome; and many will do so. It is ill-advised and unnecessary to offer new terms that will alter the plans of licensees who were otherwise prepared to proceed. This has extended the delay in settling the C block, and adds to the uncertainty in the financial markets. And most important, we are interfering with market correction mechanisms that would ensure that C block licenses are held by entrepreneurs financially able to provide service to the public.

Use of Down Payments

Of the changes to the plan adopted last September, I am most troubled by those pertaining to the disaggregation option. Previously, those choosing disaggregation were required to forfeit the down payments associated with the portion of the spectrum that was being returned; now, they may use a portion of these funds.[13] But these funds do not belong to a licensee that cannot meet its commitments -- any more than do those paid for an option to buy land that has lapsed or a downpayment on a car that has been repossessed. Yet the majority allows

[13] The prior decision allowed licensees to redeploy a portion of their down payments only in one limited circumstance -- prepayment. The key considerations that made this approach acceptable to me were that: (1) such licensees were paying the full bid amount on the licenses they retained; and (2) election of this option removed the government entirely from installment payments -- some licenses were fully purchased, and the remaining licenses were returned to the FCC for reauction. The result was that the electing licensee was relieved of suspension interest and all debt owed, in return for purchasing or returning all licenses. The same benefits do not accrue in the disaggregation context, where the licensee continues to receive below-market interest rates and the government continues to administer installment debt.

these funds to be used to pay down principal on the licenses that are kept or, worse, to pay suspension interest.

Using deposits that would otherwise be forfeited to pay suspension interest essentially postpones the time when the licensee's financial ability to construct and operate a service is put to the test. It also is not fair to the licensees who met their obligations and who must raise the money to cover suspension interest payments.

Delays in Resumption of Payments and Reauction

I am also troubled by yet another extensive delay before the date by which licensees will need to resume payments on their licenses. Until such payments are made, the market will not know which licensees are financially viable. The payments already have been suspended for one year. Now, additional time is needed for licensees to sort out their expanded options. At the same time, the grace period for delayed payments is being extended. So we prolong the time during which the licenses will be tied up, with no assurance that the licensees will ultimately be able to finance and construct their systems and provide service to the public.

In addition, I am concerned by the further delay in the timing of the reauction of forfeited licenses. A reauction is needed to put licenses in the hands of those capable of putting them to productive use. It will also create long-awaited opportunities for those designated entities that, in the prior auction, consciously and responsibly chose not to bid more than they could pay. And yet, in today's order, the majority indefinitely postpones the reauction. Last year, we said it would occur in the third quarter of 1998. Just two months ago, the new Commission committed to a date of September 29, 1998. Now, the reauction is deferred until further notice.

Still more delay is inherent in the Commission's inaction on rules for the C block reauction. These rules were proposed in the same September order that here is under reconsideration and for which the comment period has ended. Yet even though decisions on some issues in that proceeding could affect the elections from among the newly expanded options, the majority has declined to settle those issues today.

Competing Objectives

The agency is caught between conflicting concerns. Everyone agrees, at least as a general principle, that it is vital to maintain the integrity of the auction process. Yet we naturally are drawn to help C block licensees who are facing hardship. Behind the corporate names printed on the licenses and the petitions for relief stand real people -- small business owners, entrepreneurs, individual investors, and others, many of them women and minorities -- facing real problems. I -- like my colleagues -- am drawn to help them.

But it is impossible to fully reconcile a commitment to fair market-driven spectrum assignments with a willingness to change the rules of the game after it has been played. At some point, one objective must prevail over the other. In my judgment, where the objectives collide, the integrity of the process must control, and the desire to help individual players must yield.

If we really believe in assigning spectrum by auctions as authorized by Congress in the Omnibus Budget Reconciliation Act of 1993, and the "procompetitive, deregulatory" paradigm of the Telecommunications Act of 1996, we must accept the reality that some licensees will fail in the marketplace, and that their conditional licenses will need to be canceled and reauctioned, as our rules envisioned. Such outcomes are painful, but necessary, if the marketplace is to work its magic.

My disagreement with the majority concerns the lengths to which the Commission should go in trying to prevent such outcomes.

Judges and legislators, lawyers and economists -- all speak to the need to promote and protect *competition*, not *competitors*. In my opinion, today's decision crosses the line to favor specific competitors over others. I cannot support that result.

Some parties have suggested that the Commission owes a duty to go to extra lengths because the C block licensees are all small business "designated entities." This argument misses the point that, with or without *post hoc* relief, the C block spectrum will remain exclusively for designated entities. What is at issue is a clash *not* between the interests of small entities and those of large conglomerates. Rather, the issue is whether the FCC should favor one group of designated entities over another. I do not believe it should.

The Commission's Role

The Commission's intervention in the post-auction market is neither compelled nor excused by the ongoing financial obligation of the C block licensees to the U.S. Treasury. The Commission's fundamental role is that of a licensing agency, not that of a lender. Although the agency's C block rules enabled designated entities to purchase spectrum rights with installment payments, as Congress specifically contemplated (47 U.S.C. §309(j)(4)(A)), our responsibility after the auction was to issue licenses, which were expressly conditioned upon the licensees' fulfillment of their financial commitments.

Those who say the Commission functioned as a banker are mistaken. We never performed the banker's role (which I know well) of reviewing the bidders' balance sheets, their business plans, the wisdom of their planned bids, and the quality of their management. We never assumed the responsibility of creating "commercially reasonable alternatives" for whatever difficulties the C block licenses encountered. To the contrary, we repeatedly declared our commitment to the efficacy of the market mechanism, and our intention to enforce auction rules.[14]

Conclusion

Today's decision may enable the survival of some C block licensees who might have failed without government intervention. More likely is the prospect that the significantly sweetened selection of options will lead directly to more churn in business plans, more deviation from initial auction results, more confusion in the financial markets, and more delay in construction of facilities. A further cost is the long-term skepticism in the market that the Commission will revise its rules whenever the pressure is great enough.

It is my view that these rule changes prolong uncertainty, and fail to treat all interested parties equitably. Accordingly, to the extent the majority goes beyond the terms of last September's order, I respectfully dissent.

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[14] I note that the Commission acted without hesitation when some successful C block bidders failed to make their down payments although they had made their deposits. The FCC immediately defaulted the bidders and assessed maximum forfeitures, applying all payments to the forfeitures. See "18 Defaulted PCS licenses to be Reauctioned; Reauction to Begin July 3rd," Public Notice, DA 96-872 (rel. May 30, 1996); Mountain Solutions LTD, Inc., Order, 12 FCC Rcd 5904 (WTB 1997), application for review pending; BDPCS, Inc., Order, 12 FCC Rcd 6606 (WTB 1997), application for review pending; C.H. PCS Inc., Order, 11 FCC Rcd 22430 (WTB 1996). These bidders, and those who dropped out in the course of the auction, had no reason to expect that the Commission would subsequently change the rules of the game. It is of course impossible to sort out how these bidders would have behaved differently if they could have foreseen the accommodations that would later be offered.

SEPARATE STATEMENT OF COMMISSIONER MICHAEL POWELL, CONCURRING IN PART AND DISSENTING IN PART

Re: **Amendment of the Commission's Rules Regarding Installment Payment Financing For Personal Communications Services (PCS) Licensees (WT Docket No. 97-82)**

On a fateful day in March of 1997, the Commission's Wireless Telecommunications Bureau -- at the urging of certain C-block auction winners and with all good intentions -- suspended installment payments for C-block licensees. This action set forth in motion, in my observation, a calamity of sorts that now culminates in yet another round (hopefully the last) of "March Madness." We are asked to reconsider the prior Commission's decision from last September which offered measured relief to the successful C-block auction participants, primarily out of some concern that licenses might get tied up in bankruptcy court should many of these companies default. I support that prior decision and its rationale.

As I explain more fully below, I also endorse our decision to keep the basic framework established in our prior order and to reject proposals to radically change the rules of the game. Though I support most of the modest measures we take here, I believe that more substantial modifications to help a small subset of C-block companies that find themselves unable to meet the original terms and conditions of the auction would do more harm than good. Specifically, I believe that to do so would severely compromise the prospects for both existing and future small businesses and other designated entities to raise sufficient capital to compete effectively in the marketplace.

The C-block was established out of a recognition that small businesses and entrepreneurs, including minorities and women, faced particularly difficult challenges in raising sufficient capital to compete at auction for spectrum and for financing their eventual build-outs. The rules were designed to ensure a fair opportunity to obtain spectrum (by segregating a block and holding it out exclusively for these interests) and to provide more lenient, below-market payment terms to ease the burden of raising capital to bid for spectrum and to finance build-out. In hindsight, one might question the financing terms in light of their unintended consequences, but they were nonetheless the rules of the game established for all to abide by.

Rules, by their very nature, will always be both over-inclusive and under-inclusive. That is, they benefit some they really should not, and they will disadvantage others that should benefit. The virtue of any rule, however, is that it provides a degree of certainty and clarity. Rules should allow all players to understand the terms and conditions of the contest and to reliably predict the results of complying or failing to comply with them. In the context of an auction, relying on the established rules allows participants to evaluate the consequences of their bids -- bid too high and fail to make a payment and you will forfeit your (or your investors') money and lose your license, bid to low and you risk losing the opportunity to hold a lucrative license. In the C-block auction, all participants made these difficult decisions all along the way -- some dropped out, some stayed in. The risk assessments and decisions that each participant made were anchored in the terms and conditions of the auction as well as their vision of the future market. As long as the rules were clearly established, the participants could make their own judgments about their risk tolerance, then knowingly face the consequences of their judgments and be held responsible in the event of market failures.

When the referee (in this case, the Commission) starts tinkering with the rules during the game, or worse after the buzzer has sounded, it does two very unfortunate things: First, it undermines the fairness of the contest. This we know from the earliest age and the principle is echoed on ball fields and gymnasium floors, in olympic arenas, during board games, and even in politics. The cardinal principle is that whether the rule is good or bad it must apply equally to all players or the game is patently arbitrary and unfair and the outcome invalid. There assuredly are always those that support the referee's intervention, because the resulting changes put them on top, or keep them in the lead. However, there are others that sit back in the locker room stunned and dismayed that the rules, advertised as conditions for victory, were changed to accommodate certain players. Second, and most importantly in my mind, is that by telegraphing to the world that the game is subject to unpredictable changes in the rules based on the subjective decisions of the tournament organizers, you discourage people from playing the game at all.

If we constantly adjust our rules to "help" certain players, no matter how sympathetic their plight, we run the very severe risk of foreclosing future opportunities for this very class of players to enter, and compete effectively, in future games. Most telecommunications contests require money to enter and more money to win. It is difficult enough for small, often unproven, companies to raise funds because of the risk associated with their ventures. The Commission should not, by waxing and waning on the regulatory structure, make it more difficult by adding to the uncertainty. If we demonstrate that we are an unreliable referee, capital markets will be unwilling to take the additional risks associated with the regulatory uncertainty that befalls a process by which the rules can be altered at any time based on the sympathies that happen to win the day .

There are acute risks associated with the type of ventures C-block was designed to help, over which regulators have no control, but which are key risk factors for potential investors. This heightens my fear of tipping the risk scale against these companies. It should be remembered that to investors, the entities now seeking our help are inherently risky ventures to begin with. Often their management is less proven, their business plans are untested and less complete, and their optimism is sometimes overstated. This is before consideration of the stiff competition such entities will face in the marketplace if they do win a license in an auction. The additional risk we introduce by demonstrating that our rules are not truly reliable may be more than investors can bear. I sincerely question whether the events of the past and even the little bit we offer to parties in financial distress today is worth the further damage we may do to the risk calculations of investors tomorrow. The sad result being that the very class of people we hope to help now will be left short later.

This Order provides a number of measures I fully support, for they should provide each C-block licensee slightly more flexibility and, consequently, a fighting chance to attract financing, build-out and compete. Most of them clean up imperfections in the original order without doing damage to the underlying principles. In particular, with the added flexibility of the MTA-by-MTA choice of options, we have taken away the artificial and unnecessary nationalization of the C-block "relief" plan. Instead, business plans and investment pitches can continue despite the circumstances facing these licensees. I must depart from the majority on one point, however: allowing participants to use certain down-payment "credits" and continue paying installments.

The prior decision in September made the appropriate cut to allow licensees that have received a payment respite to spread their payment of accrued interest over two years. This provided a reasonable deferral of the payments that could be absorbed into a workable business plan. However, the majority is allowing a portion of the down payments from returned licenses to be used to pay down what is rightfully owed to the government under binding promissory notes and license conditions. While I do not oppose the use of "credits" to encourage licensees to prepay their debt and get the FCC out of the banking business, I object to the idea that such credits can be used to give a boost to certain players with substantial amounts of accumulated interest. In turn, there will be absolutely no realizable benefit to the American tax payers. From a lender's point of view (which we unfortunately have to take on behalf of the United States), I do not believe that this is "commercially reasonable:" it will more likely just delay the inevitable for some licensees, provide free pocket money for key investors and principals, and not have any guaranteed positive affect on build-out investment. If credits are available to licensees that disaggregate, I would prefer that such credits be limited to prepayment of principal instead of this temporary, partial reprieve that really will not help as much in the short term as it will hurt in the long term.

Some believe that efficient spectrum management counsels that it is better to keep as many of the present winners moving forward, rather than incur the additional administrative expense and risk of reclaiming licenses and re-auctioning them. Perhaps, but that is not what we advertised to the original bidders, many of whom dropped out of the auction confident they would get a second bite at the apple if and when the high bidders failed. Furthermore, it seems to me that this belief as applied precipitously devalues auction integrity and its impact on future auctions, and has no principled limits to constrain our subjective benevolence.

I should make one final point. Last summer, it is my understanding that many parties invoked the fear of bankruptcy in developing options and arguments, but in reaching today's decision I heard very little discussion whatsoever about more impending bankruptcies. I did not hear anyone argue that the changes we make today would truly lessen that troubling possibility for the bulk of the licensees. And, I heard very little compelling evidence that the threat, whatever it may have been, is any more likely today than it was in September when the Commission first offered a number of options. Let me be clear that I too am anxious to see the C-block winners survive and provide an important source of competition, but not in a manner that will foreclose real opportunity for such groups in the future. Indeed, I expect to continue to hear about more C-block success stories than failures.

At least, however, the regulatory game is over. The buzzer has sounded. The time has come to compete in the marketplace, not the bureaucracy. There can be no more regulatory meddling, or horse trading. We must provide certainty, <u>now</u>, lest we win the battle only to lose the war.

Separate Statement of Commissioner Gloria Tristani

In the Matter of
Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses

Order on Reconsideration of the Second Report and Order

I am heartened that the Commission has agreed to a package of fair, reasonable, and commercially viable options addressing the financial issues confronted by C block licensees. And I am hopeful that the majority of licensees will find among these options the flexibility to pursue their business plans as they best see fit. I am satisfied that the Commission has done virtually all that it can to provide C block licensees flexibility and relief consistent with and required by our overriding mandate to manage the spectrum in the public interest, and so I join the majority's decision. I write separately, however, to articulate the fundamental principles guiding my decision. Those principles would have led me to support greater relief in the treatment of the down payment credit.

In granting the Commission authority to assign spectrum licenses by auction, Congress directed us to use that authority for the ends of promoting the development and rapid deployment of new technologies and services for the public, facilitating economic opportunity for designated entities and new entrants, and vigorously fostering competition. I take these directives as the lodestar of my decision.

Much has been written about the need to protect the integrity and fundamental fairness of our auctions. With this, I fully agree. But I also believe that when the Commission acted last September, it was generally acknowledged that a significant number of C block licensees, holding licenses covering a majority of the United States, were in financial distress. The financial difficulties of several of the largest licensees cast shadows of doubt across many of the smaller licensees because of the largely interdependent nature of the licenses as building blocks for a nationwide network.

Recognizing the severity of the problem, and its responsibility to assure that this spectrum is used in the public interest, the Commission appropriately decided last year to modify its rules to provide licensees with modest, but tangible, relief. By offering relief through a public notice and comment rulemaking, we have been able to uniformly address the rights of a class of licensees without undermining the integrity of our auctions program.

Some commenters and licensees would have us go further -- to discount and restructure their debt, much as an ordinary commercial lender might. Yet the Commission is not a commercial lender, and we are confronted by competing policies as we negotiate a path as both lender and regulator. In our role as spectrum manager, it is not appropriate for the Commission to assure the success of any class of licensees. C block is an entrepreneurs' block. The truth is that entrepreneurs and small businesses do fail. And they fail at a rate greater than other businesses overall. So it would be inadvisable for the Commission to tie its spectrum management policy to the assured success of any group of licensees; to seek to avoid bankruptcies at all costs; or to become an apologist when such bankruptcies do occur. Fairness to *all* auctions participants requires that we not adopt measures that would significantly alter the financial obligations that the successful bidders themselves freely assumed at auction. But we can, and should, give them the opportunity to survive and thrive.

Today's decision provides that opportunity by granting licensees significant flexibility to modify their holdings in light of market conditions and business plans. We have upheld the Commission's original decision to provide a variety of options, recognizing that no single option would be appropriate for all. The character of the relief offered is to allow licensees to surrender a certain amount of spectrum in exchange for a proportionate reduction in debt. In addition, we offer further flexibility, so that licensees may adopt different options in different regions (on a MTA basis), as well as combine prepayment and disaggregation.

Inherent in this approach is a focus on whether the licensee chooses to use or relinquish the spectrum it currently holds. Having decided to grant licensees this relief through flexibility, I believe that the use or non-use of the spectrum should remain the central point in structuring the relief options. Such a view is constructive and forward-looking, rather than focusing on whether certain licensees willfully overbid, or inadvertently overbid, or whether they overbid at all. Such past actions of any individual licensees become irrelevant, I believe, in light of our affirmation of the Commission's decision to offer comprehensive relief and flexibility to all licensees.

Centering on whether a licensee intends to use its spectrum to provide service to the public, or whether it plans to return it, my approach would lead to a different treatment of the licensee's 10% down payment on deposit with the Commission. I do not disagree that it is appropriate for some small fee or cost to be associated with the abandonment of spectrum previously bid for, whether surrendered in a 30 MHz or 15 MHz portion. I join the majority's view that 3% of the net bid (equal to 30% of the down payment), which it adopted for most of the options, is appropriate. However, I view this cost as akin to fee for restructuring, much as a commercial bank might impose. It acknowledges the cost of the restructuring, and is in exchange for the benefits of relief from a substantial portion of debt and the creation of an automatic spectrum market (in the case of disaggregation), or the opportunity to hold an unencumbered license (in the case of prepayment). But 3% of the net bid, or 30% of the down payment, also is minimal enough not to act as a disincentive or a penalty for a licensee making a choice which the Commission has otherwise freely offered. I would not view this cost as a "deterrent to speculative bidding," which is a redressed description of a penalty for past behavior.

This cost should be associated only with the abandonment of the spectrum. The licensee would forfeit 30% of the down payment that relates to the spectrum it chooses to return, whether as a whole 30 MHz license (under the pure prepayment option) or 15 MHz piece (under either disaggregation option). Correspondingly, the licensee would retain 100% of the down payment that relates to the spectrum it chooses to keep. Critically, licensees are not penalized to the extent that they choose to go forward with providing service to the public. This approach -- focusing on the use of the spectrum -- is consistent with our spectrum management responsibilities, as expressed in Section 309(j), to promote service to the public, provide opportunity for new entrants, and foster competition.

Basing the fee on the amount of spectrum returned results in varying credits of the down payment. Licensees would receive a 70% credit for a full license returned under the prepayment option, while receiving 85% credit for a license disaggregated, whether then prepaid or continued on installment payments. Some suggest that the lack of parallel treatment is a problem -- that each license should be subject to the same fee, whatever option is chosen. But the size or design of a license is itself arbitrary, as acknowledged by the fact that the Commission has either adopted or proposed spectrum partitioning and disaggregation rules for the majority of commercial mobile radio services. A cost per license would be a cost merely to participate in the choices we offer. That analysis is more characteristic of a bank, less a manager of the spectrum.

Likewise, today's Order suggests that we should provide greater incentives for licensees to select the prepayment option, because it has the effect of removing the Commission from the banking business. I believe this analysis has two flaws. First, any modification to the credit of the 10% down payment will affect a licensee's choice of prepayment marginally, if at all. A decision to prepay will be made on the overall economic costs and benefits to the licensee. Although prepayment may be a good option for some -- particularly those able to obtain down payment credits for the surrender of other licenses -- for others it will not, because it does not account for loss of government financing substantially below their cost of funds in the private market. Because the installment payment plan was offered at the government's cost of funds, a prepayment option discounted to the licensee's higher cost of funds would not be economically neutral to the government. For that reason, and because such a discount would fundamentally change the terms under which these bidders won (and others lost) these licenses, I agree with the decision not to discount the debt. Nonetheless, I believe we must recognize that such a decision affects the overall economic attractiveness of prepayment. A modest tinkering with the credit of the down payment to lessen the credit for disaggregation with resumption of payments, and to increase the credit for disaggregation with prepayment, will not affect that balance.

In addition, for C block the decision for the Commission to serve as a banker is over. That decision was complete with the adoption of service rules. Whether prepayment is a good option for some, we will the remain banker for many. Though I agreed with our decision in the recent Part 1 Report and Order to temporarily suspend the use of installment payments in future rulemaking proceedings, I do not believe we should distinguish the cost of an option based upon whether it minimally reduces our banking role for this service.

Thus, I would offer an 85% credit for any licensee choosing the disaggregation option, whether prepaying or continuing on installment payments. I would not tinker with the calculation of the down payment credit, merely to make disaggregation with installment payments cosmetically equal to standard prepayment, or to make disaggregation with prepayment more attractive than disaggregation with installment payments. It is easier -- and more in the public interest -- simply to ask whether the licensee is choosing to serve the public by making use of the spectrum. Despite these decisional differences, I am pleased that the majority is able to support use of 85% of the down payment for at least one of the disaggregation options.

There is an additional area where I believe we provide important and useful flexibility. This is the modification to allow licensees to apply to the down payment credit either to reduce principal or to apply against accumulated suspension interest. Suspension interest is, in effect, a past debt. It has accumulated because the Commission, by Bureau Order, suspended payments pending resolution of this proceeding. Allowing application of the credits to suspension interest will provide licensees modest relief from the burden of paying both past and current interest simultaneously. At the same time, we do not defer current debt. To take advantage of this option, licensees must be timely on all current interest, making a showing of financial viability.